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- **What are "Comparable Facilities?"**
- **FCC Spectrum Auctions**
- **FCC Reorganization Reflects New Wireless Industry**
- **PCS Interests Seek FCC Endorsement of Cost Sharing**

Law Offices  
KELLER AND HECKMAN  
Washington Center  
1001 G Street, N.W.  
Suite 500 West  
Washington, D.C. 20001

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*Telecommunications Advisory*

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## FOR MORE INFORMATION:

**Fax this page to:**

**To: Raymond Kowalski  
Keller and Heckman  
Washington, D.C.**

**Fax No.: 202-434-4646**

**Confirmation No.: 202-434-4253**

Yes! We want to know more about the issues discussed in the Fall/Winter 1994 issue of the Telecommunications Advisory.

We are especially interested in:

☐ Negotiating the relocation of our 2 GHz microwave system

☐ Bidding for new licenses

☐ Keeping up with PCS developments

☐ Other: \_\_\_\_\_

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# KELLER AND HECKMAN

INSIGHT AND COMMENTARY

## 2 GHz NEGOTIATING POINTS

### Seven Steps to Take in Advance of Negotiations with PCS Licensees

by John B. Richards

**T**he mystery is beginning to wear off the 2 GHz/PCS relocation process. Incumbent licensees operating microwave facilities at 2 GHz are being contacted already by PCS applicants, and "the rubber" is beginning to hit "the road."

Unfortunately, some incumbent licensees are declining to focus on the opportunities created by the FCC's relocation rules. Instead, they are throwing up their hands, turning in their existing licenses to the FCC for cancellation and relocating at their own expense to other bands. This approach, in our view, is mistaken.

The road to relocation may be uphill, but it could well prove to be worth the journey. Incumbent licensees who understand the ground rules set by the FCC are most likely to benefit from the 2 GHz negotiation and relocation process.

Although each case will vary with the individual facts presented, here are seven steps you can take immediately that will help to assure a successful microwave relocation.

- **Keep a Diary or Log.** Under the FCC's rules, all reasonable relocation expenses incurred by the incumbent 2 GHz licensee are reimbursable by the PCS proponent. From "Day One,"

we recommend that all incumbent licensees carefully monitor all efforts related to the relocation project. Task each employee with the responsibility of keeping a diary or log listing each and every expense, each and every phone call, each and every minute devoted to the relocation. It could be reimbursable down the road.

- **Understand Your License Status.**

You are entitled to receive reimbursement if you are required to relocate your licensed facilities. Surprisingly, however, some 2 GHz microwave licensees are simply unaware of their current licensing status before the FCC. Remember, each license in an affected band could give your company tangible rights. Be careful. Monitor your licensing situation closely.

- **Understand Your System.** The FCC's rules obligate the PCS licensee to provide "comparable facilities" to displaced 2 GHz microwave licensees. You should catalog your current system. Describe your performance parameters. Know your reliability requirements. The FCC's rules require the PCS licensee to move you back to the 2GHz band if

(continued on Page 3)

#### In this issue:

#### **Seven Steps to Take in Advance of Negotiations with PCS Licensees**

*Incumbent microwave licensees soon will be contacted by PCS auction winners. These are seven steps the microwave license can take right now to assure favorable relocation results.*

(FEATURE STORY)

#### **Relocation of 2 GHz Microwave Licensees Enters the Final Phase**

*The end of the auctions for the A and B blocks of PCS spectrum will trigger the beginning of relocation negotiations.*

(PAGE 2)

#### **Electromagnetic Fields Remain a Health Concern**

*No one knows for certain if exposure to radio waves can be harmful, but various federal agencies are examining the question.*

(PAGE 3)

TWO MINUTE WARNING

## Relocation of 2 GHz Microwave Licensees Enters the Final Phase

by Harold M. Salters

Near the end of the game in a timed sport, teams will often use their "two-minute drill" -- a series of plays drawn-up well in advance -- designed to assure victory during the all-critical end-game. Teams devote significant practice time to rehearsing these plays because they know that the quality of their performance in the endgame can determine victory or defeat.

For private microwave incumbents in the 2 GHz band, the game began in 1992 when the FCC proposed to force these licensees to vacate their spectrum. The "two-minute warning" for microwave incumbents will be sounded by the FCC probably sometime in March 1995. At that time the clock will start ticking on a three-year negotiation period between microwave incumbents and broadband PCS licensees. Any microwave incumbent that does not have its two minute drill rehearsed is automatically going to be playing catch-up.

Microwave incumbents must begin planning now for up to two-years of "voluntary" negotiations

with PCS licensees, to be followed, if necessary, by a one-year "mandatory" negotiation period. (Public safety licensees have a slightly different timetable, but the concerns are the same.)

According to the FCC's rules, PCS licensees that displace 2 GHz incumbents must guarantee payment of all costs of relocation to a "comparable" facility including all engineering, equipment and site relocation costs, as well as FCC fees and any "reasonable" additional costs, including legal fees. Further, the Commission has ruled that PCS licensees must complete all activities necessary to put the replacement facilities into operation, including engineering and frequency coordination.

The problem is, the FCC has never defined what constitutes "comparable facilities." Hence, the negotiation period becomes critically important, because the FCC has made it clear that it will make every effort to avoid becoming the final arbiter of these types of disputes.

The two-year voluntary period will begin soon after the FCC

receives license applications from PCS auction winners. To assure that all parties have adequate notification "that the clock has begun ticking," the Commission has announced that it will release a Public Notice specifying the commencement date.

The FCC's ongoing auction of broadband PCS licenses on the A and B blocks (30 MHz wide) is likely to conclude in March or April. FCC auction rules require that winning bidders file their long-form PCS applications with the Commission ten days after the close of the auction. We would thus expect the FCC to issue its "PCS Application Acceptance" Public Notice to start the negotiation clock ticking in early Spring.

We believe that microwave incumbents are in their best bargaining position at the start of the negotiation period. However, to take advantage of their position, strategies must be in place to handle such eventualities as a PCS licensee's offer to replace only certain links, leaving the incumbent's remaining links untouched.

Although the relocation game has already begun, it is still not too late to prepare for the final minutes. Incumbents who wait too long, however, will be in grave danger of negotiating with their backs to the wall. For them, the game may already be over. ■

For further information contact the editor:

**Raymond A. Kowalski**, Law Offices of Keller and Heckman, Washington Center, Suite 500 West, 1001 G Street, N.W., Washington, D.C. 20001, Tel. (202) 434-4230, Fax (202) 434-4646. (This newsletter may be copied or quoted, so long as proper attribution is given. Articles are on topics of general interest and do not constitute legal advice for particularized facts.)

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(continued from page 1)

- your replacement system proves not to be comparable to your original system. Performance information will be vital to establish a "baseline" for your rights as an incumbent licensee.
- **Look for Allies.** Consider whether it would be advantageous early in the process to discuss your situation with other similarly situated 2 GHz licensees in your geographic area. You may be positioned to negotiate with PCS licensees as a group, to your benefit.
  - **Know the PCS Licensees.** To benefit from the relocation process, you should find out everything you can about the PCS

licensees in your band. How much value do they attach to your spectrum? What is their market position? How quickly do they need to move forward?

- **Assess the Speed Factor.** Generally, the FCC has established PCS negotiation periods of three years for non-public safety incumbent licensees and five years for public safety entities. Decide whether it would be advantageous for your company to move quickly. Remember, alternate frequency bands soon may become saturated in certain areas of the country.
- **Decide on the Scope of the Assistance You Need.** Decide whether you need legal/regula-

tory advice, engineering advice, economic advice or a combination of all or a part of the above. Some of our clients need lawyers. Others also need economists and engineers. Our firm provides a "turnkey" service to its clients, by affiliating with economists and engineers as necessary in particular cases. In that manner, we can provide the level of service each client requires.

We expect many 2 GHz licensees to benefit dramatically from the relocation process. To accomplish that objective, however, we recommend that you focus on the issue now. Be proactive! ☐

#### POTENTIAL LIABILITY

## Electromagnetic Fields Remain a Health Concern

by Joseph M. Sandri

**W**ith this issue of our newsletter, we begin an examination of the continuing concern about the health implications of exposure to electromagnetic fields ("EMFs").

Recent studies, including one published in the January 15, 1995, issue of the American Journal of Epidemiology, have explored the question of whether a link exists between cancers and exposure to EMFs. Newspapers are giving prominent coverage to such studies.

Not surprisingly, regulatory agencies are reacting. For example, the New Jersey Department of Environmental Protection is currently considering a preliminary proposal which would require that electric

power transmission lines be modified or built with design features that reduce magnetic levels "to levels that are as low as reasonably achievable."

Additionally, the preliminary proposal states that a fee would be required from the power utility to fund the regulators who would enforce such rules.

The Federal Communications Commission ("FCC"), Environmental Protection Agency ("EPA"), Food and Drug Administration ("FDA"), and other federal and state entities have conducted preliminary studies or are pursuing studies on the effects of electromagnetic fields on the health of the population. For example, the FCC is interested in

the effects, if any, of EMFs generated by wireless communications systems and devices, especially hand-held devices that are held close to the user's head. All of these studies are still in the preliminary phases.

Keller and Heckman's Telecommunications, Litigation, Occupational Health and Safety, and Food and Drug practice groups are actively monitoring this matter. Keller and Heckman's staff of full time engineers and PhD scientists, who regularly work in these practice groups, are also being brought to bear on this matter. Future issues of this Newsletter will address the complicated and emotional factors in this continuing debate. ☐

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Suite 500 West  
Washington, D.C. 20001

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*Telecommunications Advisory*

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### **Opportunity Knocks for 2 GHz Incumbents**

## **FCC Announces Commencement of Voluntary Negotiations**

*by Raymond A. Kowalski*

Now that the auctions for Block A and B PCS licenses are closed, the next step toward the creation of PCS systems in the United States is the relocation of point-to-point microwave systems that presently occupy the 2 GHz band earmarked for PCS systems. PCS licensees ultimately can force the microwave incumbents to leave the band by providing them with "comparable facilities." However, before the two sides resort to such involuntary relocations, the Federal Communications Commission (FCC) is hoping that they will be able to come to mutually agreeable terms for early and voluntary microwave system relocation.

On April 18, 1995, the FCC officially announced that the period of voluntary negotiations between microwave incumbents and the winners of the A and B block PCS auctions had begun as of April 5, 1995. Under the FCC's rules, this voluntary negotiation period will run for two years, except for incumbent public safety microwave systems, which will have three years for voluntary negotiations.

Microwave incumbents now are beginning to receive overtures from agents for the PCS auction winners. As the negotiations commence, it is vital for microwave incumbents to understand what is being negotiated during this period. Although the PCS auction winners might indicate otherwise, these negotiations are not about "comparable facilities." Rather, they are about the early and voluntary

departure of the microwave incumbents from the 2 GHz band.

The issue of "comparable facilities" has almost nothing to do with this phase of the negotiations. The requirement for the PCS licensee to provide the microwave incumbent with "comparable facilities" comes into play only when an incumbent microwave licensee is being "involuntarily" relocated under the FCC's "mandatory" relocation rules. Involuntary relocation, however, may not be reached for three to five years.

Keller and Heckman is counselling its clients that this initial voluntary negotia-

tion period is not about engineering or "comparable facilities." It is about the marketplace.

The FCC's mandatory relocation rules preserve the microwave incumbents' rights, but there is no magic formula to accomplish that goal. During the voluntary relocation period, microwave incumbents are free to negotiate whatever terms and conditions they believe are appropriate under the circumstances.

The questions and answers on page 3 may help incumbent microwave licensees understand the nature of the voluntary negotiation period. ♦

### **Keller and Heckman Takes on PCIA**

Ten days after the FCC announced that the voluntary negotiation period had begun, PCIA, the trade association for the PCS industry, wrote a letter to FCC Chairman Hundt, seeking to change the ground rules.

PCIA decried the possibility that incumbent microwave licensees might try to extract "excessive payments" from PCS auction winners during the voluntary negotiations. Therefore, it asked the Chairman to eliminate the voluntary negotiation period, cap the allowable compensation and do away with the microwave licensee's right to restoration of its 2 GHz system if its replacement system turns out to be inadequate.

Learning of this letter, Keller and Heckman wrote to Chairman Hundt, defending the incumbents' rights to negotiate the best terms possible for their early and voluntary departure from the 2 GHz band.

This attempt to intimidate microwave incumbents and to contaminate the negotiation process is ample evidence of the tactics that will be employed against unwary microwave licensees.

## More 2 GHz Relocations

# FCC Proposes Reallocation of Spectrum for Mobile Satellite Service

by John Reardon

Despite previous indications that use of the bands in the 2 GHz range would not be changed for the foreseeable future, the Federal Communications Commission (FCC) has adopted a Notice of Proposed Rule Making in ET Docket 95-18 (Notice) that looks toward reallocating the bands 1990-2025 MHz and 2165-2200 MHz for use by the Mobile Satellite Services (MSS).

Incumbent licensees currently operate a significant number of stations in these bands. Like the incumbent licensees who must move in order to make room for Personal Communications Services (PCS), these licensees also will be required to relocate their facilities if the FCC's proposal becomes final.

The 1990-2025 MHz band is part of a band that is currently allocated for the Broadcast Auxiliary Services (BAS). The FCC proposes to relocate BAS incumbents to the band 2110-2145 MHz and to force MSS licensees to pay the costs of this relocation.

The 2110-2145 MHz band, however, is currently used by common carrier fixed microwave services and private operational-fixed microwave services. In its Notice, the FCC stated that it believes that sharing between BAS and these fixed microwave services is not feasible. Therefore, before the BAS licensees can be moved into this band, the incumbent fixed microwave service licensees must be moved out.

Like the 2110-2145 MHz band, the 2165-2200 MHz band also is currently used by common carrier and private operational-fixed microwave services. They also must be moved before the band can be used by MSS providers.

The MSS providers would be required to pay the incumbents' relocation expenses, build new facilities for the incumbents, and demonstrate that these new facilities are "comparable" to the incumbents' former facilities. The new facilities would be built and tested by the MSS provider before relocation would occur. Should the new facilities prove within one year not to be equivalent in every respect to the former facilities, the MSS provider would have to pay to return the incumbent to its former facilities until full equivalency is attained.

Note that MSS providers would be forced to finance the relocations of both incumbent BAS licensees and fixed microwave licensees. The Notice is not clear on the time frame, but sources at the FCC indicate that there would be a three

year negotiation period similar to that provided licensees in the band 1850-1990 MHz.

In a footnote, the FCC proposed to eliminate primary license status after January 1, 1997, for licensees in the Private Operational-Fixed Microwave Service that are notified of a request for mandatory relocation. This is a significant departure from the policy that now governs the relocation of microwave incumbents to make room for PCS. Those licensees will not lose their primary status until their comparable facilities have been built and tested.

The FCC proposes to award the new MSS licenses through competitive auctions, utilizing simultaneous multiple round bidding. ♦

### For further information contact the editor:

**Raymond A. Kowalski**, Law Offices of Keller and Heckman, Washington Center, Suite 500 West, 1001 G Street, N.W., Washington, D.C. 20001, Tel. (202) 434-4230, Fax (202) 434-4646. (This newsletter may be copied or quoted, so long as proper attribution is given. Articles are on topics of general interest and do not constitute legal advice for particularized facts.)

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## Understanding Voluntary Negotiations

**Q. If "comparable facilities" are not being negotiated during this voluntary negotiation period, what is?**

**A.** Among other things, the price for the incumbent's early and voluntary departure from the 2 GHz band.

**Q. Do I have to negotiate with the agent of the PCS auction winner if I am contacted?**

**A.** No. Negotiations are not required during the voluntary negotiation period. A mandatory negotiation period will follow the voluntary negotiation period.

**Q. If I choose to negotiate, do I still have the right to comparable facilities?**

**A.** Comparable facilities is your worst-case scenario. Even if you are eventually relocated involuntarily, you are always entitled to comparable facilities. If you relocate voluntarily, you are entitled to anything that is mutually agreeable.

**Q. Does that include upgraded, digital facilities?**

**A.** It can include upgraded, digital facilities, dedicated wire-line facilities, fiber-optic facilities, or no facilities, that is, a cash payment — whatever you both agree to.

**Q. Why would a PCS licensee agree to give us more than "comparable facilities" when they don't have to?**

**A.** Some PCS licensees, especially those in major markets, may be willing to give you an incentive in return for your agreement to vacate the 2 GHz band early.

**Q. Can I demand to be relocated early?**

**A.** No. The PCS auction winner is in control of the timing of the negotiations. In fact, PCS auction winners may never initiate negotiations if they believe that their systems can be engineered in such a way as to not cause interference to your microwave system. However, they would be required to send you "prior coordination notices" if they are going to try to engineer around your microwave system.

**Q. If we don't agree to relocate early, don't we risk the unavailability of microwave channels in the 6 GHz band to accommodate our new system?**

**A.** Yes, but it is not your problem; it is the PCS licensee's problem. The PCS licensee will always have the burden to provide you with comparable facilities if you are required to relocate. If they cannot do so, you do not have to move. You cannot be accused of failing to bargain in good faith if you do not negotiate during the voluntary period.

**Q. If we strike a deal for early and voluntary departure from the 2 GHz band, do we still have the right to be relocated back to the 2 GHz band within a year if our new system is not satisfactory?**

**A.** Not necessarily. The right to be relocated back to the 2 GHz band applies only to an involuntary relocation. In the voluntary negotiations, you do not have the right to be relocated back to the 2 GHz band unless you negotiate it.

**Q. So giving up the relocation right is another reason why the PCS licensee might be willing to give us more than "comparable facilities?"**

**A.** Precisely.

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*"...this initial voluntary negotiation period is not about engineering or 'comparable facilities.' It is about the marketplace."*

- Lead Story

## **2 GHz Microwave Incumbents Could Benefit From Tax Break**

*by Tamara Y. Davis*

**A**s part of a package of last minute tax measures, Congress has authorized the Federal Communications Commission (FCC) to issue Tax Certificates to 2 GHz microwave incumbent licensees who enter into voluntary negotiations for the relocation of their microwave facilities. The authority for issuance of Tax Certificates to 2 GHz microwave incumbents is now contained in Section 1033 of the Tax Code.

This action permits tax-free treatment for transactions between PCS licensees and incumbent microwave operators who voluntarily move from the 2 GHz band. Since relocation to different frequency bands (or other media) is necessary to clear the band for PCS technology,

Congress classified such transactions as "involuntary conversions" within the meaning of Section 1033 of the Tax Code.

Section 1033 permits a taxpayer to defer any gain on property sold or exchanged as a result of an involuntary conversion. To defer the gain, the transaction between a microwave incumbent and an A or B Block PCS auction winner must occur before March 13, 1998. The taxpayer must: (1) reinvest the proceeds of the transaction in property which is similar to or related in service or use to the property which was converted; (2) obtain a certificate from the FCC, clearly identifying the property, and showing that the transaction was necessary or appropriate to

effectuate the FCC's microwave relocation policy; and (3) file a statement electing this tax treatment in the year the sale or exchange occurred. The election must be filed at the time of the sale and cannot be filed as part of an amended return.

Depending on the age of a company's 2 GHz microwave facilities and its treatment of depreciable property, its 2 GHz facilities may already be fully depreciated. Without this relief, any value received for the system would be treated and taxed as a capital gain. ♦

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## **TELECOMMUNICATIONS**

### **KELLER AND HECKMAN** L A W   O F F I C E S

1001 G Street, N.W.  
Suite 500W  
Washington, D.C. 20001  
(202) 434-4100

Brussels Office:  
Boulevard Louis Schmidt 87  
B-1040 Brussels  
32(2) 732-5280

### **Special Report:**

## **Telecommunications Reform Legislation Advances**

*by Joseph M. Sandri*

**S**ignificant telecommunications reform legislation is slated to be sent to President Clinton this fall for his signature. The proposed legislation is far more deregulatory than earlier, failed, proposals primarily because of dramatic changes in the power structure of Congress. Due to the November, 1994, elections, there is a Republican majority in both the U.S. Senate and House of Representatives for the first time in 40 years. The deregulatory philosophy of this new majority is evident in the character of the pending legislation.

Two major telecommunications reform bills have been passed by the House and Senate. Generally, these bills are designed to allow cable, local telephone, and long distance companies to compete in each others' businesses by removing regulatory obstacles. The Senate version, S. 652, is titled the "Telecommunications Competition and Deregulation Act of 1995." S. 652 passed in the Senate, 81-18, on June 15, 1995. The House version, H.R. 1555, the "Communications Act of 1995," was approved by a vote of 305-117, on August 4, 1995.

The two measures must now go to a House and Senate Conference Committee where differences between the two bills will be resolved. Then the legislation will be sent to the President for signature.

### OBSTACLES

Generally, after Senate passage of S. 652, the focus shifted to the House where "behind-the-scenes" maneuvers by the powerful Regional Bell Operating

Companies (RBOCs) succeeded in weakening many of the requirements for RBOC entry into the long distance and equipment manufacturing industries. AT&T and other long distance companies threatened, but failed, to derail the entire bill unless those changes were revoked.

Other sections of the House bill permit a substantial convergence of cable and RBOC interests. H.R. 1555 allows, in large markets, heavy investment in cable by RBOC interests and vice-versa. In communities of less than 50,000, cable and RBOC interests may merge. This "unholy alliance" of RBOC and cable interests is widely perceived by other industry players and the press as a danger to freely developing competition.

President Clinton has threatened to veto any telecommunications reform bill which does not rectify these RBOC long-distance entry and RBOC-cable "convergence" problems. However, the President may have to retreat from his veto threat because Congress appears to have the required two-thirds majority vote to override a veto.

### POLE ATTACHMENTS

Of special interest to electric utilities, some favorable pole attachment language was quietly added to H.R. 1555 as part of a large amendment package. Specifically, the improved pole attachment language recognizes that a utility's poles, ducts, conduits, or rights-of-way have a "value" which exceeds the cost of making that space available and that utilities that are subject to federal pole attachment

regulations may set pole attachment rates which reflect that "value."

S. 652 mandates that FCC regulations governing pole attachment rates cannot become effective until five years after enactment of the law. If the regulations allow for a rate increase, the bill allows a further five year transition period to incrementally institute the rate increase. Thus, S. 652 requires a full 10 years before utilities that are subject to federal pole attachment regulation may raise rates to reflect their actual costs for the attachments.

### PUHCA

Only the Senate version of the telecommunications legislation contains provisions that would amend the Public Utility Holding Company Act of 1935, 15 U.S.C. 79a et seq., ("PUHCA") to allow entry of Registered Holding Companies into telecommunications without prior approval from the Securities and Exchange Commission ("SEC"). The House Telecommunications and Finance Subcommittee and Energy and Power Subcommittee held a joint hearing on August 4, 1995, on a report by the SEC on PUHCA reform, but did not promulgate any suggested legislation. House Commerce Committee Minority Leader John Dingell (D-MI) and others have expressed concerns about the entry of PUHCA-regulated companies into the telecommunications services market.

# FCC Sets New Annual Regulatory Fees

by Barabara Fitzpatrick

The Federal Communications Commission on June 19, 1995 announced the 1995 annual regulatory fees. The regulatory fees for several private radio licensees are decreasing, but the regulatory fees for Common Carriers, Mass Media, and Satellite services are increasing.

Applicants for new, renewal and reinstatement licenses which pay annual fees of \$6.00 or less must pay those fees in advance for a full license term when they file those applications. Those regulatory fees which are not required to be paid in advance for the full license term are referred to by the Commission as "standard fees" and these are paid each year.

Below is a Table comparing current (Fiscal Year 1994) regulatory fees to the new (Fiscal Year 1995) regulatory fees announced in the Commission's Order. This Table also lists application fees for those services which require a combined payment of application processing fees in addition to the regulatory fees. (Application fees remain unchanged from their current Fiscal Year 1994 levels.)

The Commission on June 28, 1995 announced that the deadline for payment of standard fees for Fiscal Year 1995 is September 20, 1995. Standard fees which are not based on a subscriber, unit or circuit count must be calculated utilizing October 1, 1994 as the beginning

date. Standard fees which are based on a subscriber, unit or circuit count must be calculated utilizing December 31, 1994 as the beginning date. Late payments are subject to a 25 % penalty. This includes payments which are delayed in the mail.

The Commission has also issued Public Notices for Common Carrier Commercial Wireless, Mass Media, Cable Television and International Services detailing specific guidelines on how to meet the regulatory requirements, including payment instructions. Remittance forms that must accompany payments are included with the Public Notices. ♦

TABLE

SERVICE	FY 1994			FY 1995		
	Application Fee	Regulatory Fee	Total Fee	Application Fee	Regulatory Fee	Total Fee
Private Land Mobile	\$45	\$7/yr @ 5	\$80	\$45	\$3/yr @ 5	\$60
Operational-Fixed Microwave Services (Part 94)	\$180	\$16/yr @ 5	\$260	\$180	\$6/yr @ 5	\$210
Land Mobile Services (exclusive use) 220 Mhz and above 470 MHz	\$45	\$16/yr @ 5 \$16/yr @ 10	\$125 or \$205	\$45	\$6/yr @ 5 \$6/yr @ 10	\$75 or \$105
GMRS	\$45	\$7/yr @ 5	\$80	\$45	\$3/yr @ 5	\$60
Marine (ship) Services	\$45	\$7/yr @ 10	\$115	\$45	\$3/yr @ 10	\$75
Marine (coast) Service	\$45	\$7/yr @ 5	\$80	\$45	\$3/yr @ 5	\$60
Aviation (aircraft) Services	\$45	\$7/yr @ 10	\$115	\$45	\$3/yr @ 10	\$75
Aviation (ground) Services	\$85	\$7/yr @ 5	\$120	\$85	\$3/yr @ 5	\$100
VSATs		\$6/100 antennas			\$330	
Fixed Satellite Tx/Rx and Tx/only		\$6/100 antennas if <9m; \$85/meter if ≥9m			\$330	
Fixed Satellite Rx/only		\$55/m			NONE	
Geosynchronous Satellite Space Station		\$65,000			\$75,000	
Common Carrier Public Mobile/Cellular Radio Services		\$60/1000 subscribers			\$0.15 per mobile unit or telephone number	
One Way Pagers		\$60/1000 subscribers			\$0.02 per pager	
CAPS/LEC/IXC/Resellers		\$60/1000 subscribers			.00088 per revenue dollar	
Point-to-Point Microwave (Part 21)		\$55/call sign			\$140/call sign	

This Table lists application fees for those services which require a combined payment of the application and regulatory fees.

## Reform *(cont'd from page 1)*

### ONLINE INDECENCY AND OBSCENITY

The House and Senate bills take different approaches designed to limit indecent, obscene or harassing communications over computer networks and the Internet. Generally, the Senate bill provides for fines and prison terms for network operators and individuals who knowingly transmit or aid in the transmission of objectionable material. Permitted defenses would include: (1) good faith attempts to prevent or restrict the offending communications; (2) expressly warning an employee against, and disavowing knowledge of, the prohibited conduct; and (3) having control over access or connection to a network, but not over the network itself.

The House version expressly states that the FCC cannot regulate the content of Internet or computer network transmissions. Instead, the House provides for legal protection for "good samaritans" who attempt to screen out offensive material on their networks.

### SPECTRUM AUCTIONS

In keeping with the general deregulatory nature of both bills, the Senate bill contains a provision on spectrum auctions. The provision, sponsored by Senator Ted Stevens (R-AK) and titled the "Spectrum Auction Act of 1995," is intended to introduce market forces into the spectrum allocation process. The Stevens language amends Section 309(j) of the Communications Act of 1934 to require the Federal Communications Commission to auction spectrum when mutually exclusive applications or requests are accepted for any initial license or construction permit. Only public safety radio service licenses and construction permits for new terrestrial digital television services are exempted from this auction requirement.

As written, the FCC could interpret the language even to apply to pending, mutually exclusive applications for spectrum and thus the FCC could return such

applications and require the contested spectrum to be distributed through auctions. Existing licenses do not appear to be affected. It is clear, however, that all new spectrum allocations made available by the FCC, or from the Federal Government through the Department of Commerce, are to be dispersed through auctions.

The Stevens language also:

- Provides a mechanism for private sector entities to seek relocation of Federal Government stations that are assigned to frequencies within bands allocated for mixed Federal and non-Federal use. Private sector entities can implement this mechanism by filing a petition for such relocation with the Department of Commerce's National Telecommunications and Information Administration ("NTIA").
- Allows Federal entities to obtain reimbursement for relocation from their existing allocations.
- Requires the Secretary of Commerce to report to the President and Congress with a timetable recommending the reallocation of the bands 225-400 MHz, 3625-3650 MHz and 5850-5925 MHz. None of these bands was recommended for reallocation in the recently released NTIA Spectrum Reallocation Final Report. The band 1710-1755 MHz, which was targeted by NTIA, is also recommended for accelerated reallocation (January 1, 2000).

The private wireless user community is seeking a change in the Stevens language which would dedicate the entire 1710-1755 MHz band to private users. The spectrum would be allocated through either spectrum auctions or user fees.

### SPECTRUM REFORM HEARING

A Senate hearing occurred on July 27, 1995, concerning "spectrum reform." The hearing considered whether spectrum already dedicated to existing FCC licensees should be subject to auction. Practically speaking, because the Senate and House already passed their sweeping telecommunications reform legislation, and because S.652 includes language authorizing the FCC to auction new spectrum dedicated to private users, any "spectrum reform" legislation which addresses existing spectrum would have to be addressed in separate legislation.

### TIMING

The House and Senate are expected to return from their summer recess after Labor Day, September 5, 1995. A joint House-Senate conference should occur in mid-September to work out the differences between S. 652 and H.R. 1555. Areas of contention will include spectrum auctions, on-line indecency, pole attachments and PUHCA. A final bill could then be forwarded in early fall for President Clinton's consideration. ♦

For further information contact the editor:

**Raymond A. Kowalski**, Law Offices of Keller and Heckman, Washington Center, Suite 500 West, 1001 G Street, N.W., Washington, D.C. 20001, Tel. (202) 434-4230, Fax (202) 434-4646. (This newsletter may be copied or quoted, so long as proper attribution is given. Articles are on topics of general interest and do not constitute legal advice for particularized facts.)

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Michael F. Morrone, John B. Richards, C. Douglas Jarrett,  
Joseph M. Sandri, Jr., and John Reardon

# FCC Releases Order and Notice in Spectrum Refarming Proceeding

by Joseph M. Sandri

The FCC has released its Report and Order and Further Notice of Proposed Rule Making in PR Docket No. 92-235, the "Spectrum Refarming" proceeding. In its analysis of the Comments, the FCC said it believes that refarming will increase channel capacity and provide more efficient use of the spectrum. Outlined in the Commission's complex 245-page document is a plan designed to utilize equipment "type-acceptance" requirements and market forces to speed the transition of private land mobile radio service operations on shared spectrum below 800 MHz to a narrow band channel plan.

Generally, the FCC hopes to motivate existing PLMRS licensees to voluntarily transition to 6.25 kHz UHF and 7.5 kHz VHF channels by: (1) forcing manufacturers to limit new equipment designs to narrow band technology or its equivalent efficiency; (2) requiring applicants for new authorizations to utilize narrow band equipment and channelization; and (3) utilizing "market forces" such

as user fees, spectrum auctions and channel exclusivity, to stimulate the transition.

The FCC will implement a purportedly "soft" transition plan which does not require users to replace existing systems, but which does require that manufacturers "type accept" increasingly narrower band equipment over the next ten years. The equipment would fit into the new channel plan adopted in the Order.

In the Order, the FCC established a new channel plan based upon current channel centers and listed assignable channels every 6.25 kHz in the 421-430 MHz, 450-470 MHz, and 470-512 MHz UHF bands and every 7.5 kHz in the 150-174 MHz band. FCC also mandated 12.5 kHz, or its equivalent efficiency, type-acceptance requirements for new equipment authorized after August 1, 1996 and 6.25 KHz, or its equivalent efficiency, for equipment type accepted after January 1, 2000. The Agency adopted limits on both effective radiated

power ("ERP") and antenna height above average terrain ("HAAT"), based loosely on "safe harbor" tables developed by the Land Mobile Communications Council. Finally, the FCC proposed methods by which secondary offset UHF licensees could achieve primary status.

As a separate matter, the Agency directed the industry to consolidate the 20 private radio services into no more than four pools. If no consensus can be reached within three months, the FCC will decide the pools.

The Further Notice portion of the document addressed the use of "market-based" incentives to make more efficient use of refarmed spectrum. Comments are requested on: (1) spectrum auctions; (2) user fees; (3) "exclusivity"; (4) leasing excess capacity; and (5) encouragement of third-party commercial carriers to provide traditionally private communications services.

Comments on the Further Notice are due Friday, September 15, 1995. Reply Comments are due Monday, October 16, 1995. ♦

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### KELLER AND HECKMAN

L A W   O F F I C E S

1001 G Street, N.W.  
Suite 500W  
Washington, D.C. 20001  
(202) 434-4100

Brussels Office:  
Boulevard Louis Schmidt 87  
B-1040 Brussels  
32(2) 732-5280

### 2 GHz Microwave

## FCC Proposes Cost Sharing Regulations for PCS Licensees

by Susan L. Chenault

**O**n October 12, 1995, the Federal Communications Commission (FCC) adopted a Notice of Proposed Rulemaking (Notice) in response to a Petition for Rule Making by Pacific Bell Mobile Services (PacBell). The Notice proposes to create a mechanism for Personal Communications Services (PCS) licensees to share the costs associated with the relocation of incumbent microwave users from the 1850-1990 MHz band.

The Notice addresses the so-called "free rider" problem, which occurs when more than one PCS licensee benefits from the relocation of a microwave link by another PCS licensee. The Commission's rules presently have no mechanism for cost-sharing. Under the proposal, a PCS licensee relocating a microwave incumbent would acquire reimbursement rights that would be tracked by a new "clearinghouse."

The FCC proposed that reimbursement for cost-sharing be "capped" at \$250,000 per link, with an additional \$150,000 if construction of a new tower is required. The FCC stated that such a cap would protect future PCS licensees who lack the opportunity to participate in the negotiations. Setting the cap any higher, according to the Commission, would shift the burden unfairly to subsequent licensees.

Commission staff indicated during the October 12, 1995 agenda meeting that the price cap does not limit the amount that an initial PCS licensee may pay a microwave incumbent during the volun-

tary negotiation period. Rather, the cap applies only to the amount of reimbursement that the initial, relocating PCS company may seek from subsequent PCS companies who benefit from the relocation.

The Commission expressly recognized that "premiums" could be obtained, if acceptable to the parties, as an incentive for the microwave licensee to move early during the voluntary phase of nego-

tiations. The Commission expressed hope that the proposed cost-sharing plan would facilitate the relocation of entire microwave systems or large portions of systems.

The Commission also proposed several rule clarifications. During the one-year mandatory negotiation period, for example, a PCS licensee's offer of "comparable facilities" would be deemed a "good faith" offer. Comparable

(continued on page 3)

### Keller and Heckman Wins NRECA Source Book Bid

Keller & Heckman has been selected by the National Rural Electric Cooperative Association (NRECA) to prepare a Telecommunications Source Book for use by NRECA's membership. NRECA represents the nation's 1,000 consumer-owned rural electric power systems and their affiliates.

The Source Book, which will be completed in Spring of 1996, will serve as a first step for rural electric cooperatives to consider opportunities related to the National Information Infrastructure (NII). The Source Book will identify specific NII goals the cooperatives may wish to achieve, the services that will enable the cooperatives to satisfy the goals, and the technologies that are or soon will be available to provide the services. Business considerations, including possible involvement models, also will be analyzed. A series of seminars over the Summer will serve as a complement to the Source Book.

Jack Richards, the contact person at Keller and Heckman on this project, stated that "the firm is delighted to work with NRECA. Rural electric cooperatives need this kind of information to consider the opportunities created by new telecommunications technologies and regulations."

Keller and Heckman will be partnering with the Industrial Telecommunications Association ("ITA") and Power System Engineering, Inc. in preparing the Source Book.

Update

# FCC Making Slow Progress on Private Radio Spectrum Refarming

by John Reardon

**T**he Comment and Reply Comment deadlines have been extended again in the Spectrum Refarming proceeding (PR Docket No. 92-235). Comments in response to the FCC's Further Notice of Proposed Rule Making ("Further Notice") are now due November 20, 1995. Reply Comments are due January 5, 1996.

The Land Mobile Communications Council ("LMCC") had sought the extension because its members did not want to file comments without first knowing the outcome of the FCC plan to consolidate the 20 private land mobile radio services. Under the FCC's Spectrum Refarming Report and Order ("Order"), the private land mobile radio service ("PLMRS") industry must submit a consensus plan on radio service consolidation by November 20, 1995. Otherwise, the FCC will issue its own consolidation plan by February 20, 1995.

Although the PLMRS industry has until November 20, 1995, to create and submit to the FCC a proposal for the consolidation of the 20 service groups into two to four broad categories, with one category being set aside for Public Safety,

it appears likely that the industry will fail to submit a consensus service consolidation plan.

Issues in the Further Notice include FCC proposals to employ "market-based incentives" to encourage more efficient spectrum use, such as user fees and spectrum auctions. Despite the fact that the FCC currently lacks statutory authority to impose user fees or conduct spectrum auctions in these bands, it is seeking comment because it anticipates receiving such authority through the pending telecommunications or budget legislation. Additionally, the FCC is seeking comment on a proposal to reward users who convert to narrowband technology by a specified date with: (1) exclusive channel rights; and (2) the authority to lease excess capacity. Some in the PLMRS community fear that if the FCC grants licensees the authority to lease excess capacity the FCC will regulate such activities as commercial services, resulting in the loss of traditionally private spectrum.

So far, the FCC's Spectrum Refarming decision allows for the creation of additional channels from currently

utilized VHF and UHF spectrum under a narrow band (NB) channel plan. The FCC plans to implement a "soft" transition plan which does not require users to replace existing systems, but does require that manufacturers "type accept" increasingly more narrowband equipment over the next ten years.

Significant dates under these new type-acceptance rules are: August 1, 1996: New type-accepted equipment must be designed to operate on channels of 12.5 kHz or less or on 25 kHz channels if the equipment meets a "narrowband efficiency standard;" dual or multi-mode compatibility equipment which operates on 25 kHz and 12.5 kHz or narrower channels will also be allowed; January 1, 2005: New type-accepted equipment must be designed to operate on channels of 6.25 kHz or less or on channels up to 25 kHz if the equipment meets a "narrowband efficiency standard." Dual or multi-mode compatibility equipment which operates on 25 kHz and 12.5 kHz channels that is capable of operating on 6.25 kHz or narrower channels will be allowed.

A new NB channel plan based on current channel centers has been established. NB channels will be designated every 7.5 kHz in the band 150-174 MHz and every 6.25 kHz in the bands 421-430 MHz, 450-470 MHz, and 470-512 MHz. Users will have the flexibility of aggregating up to the equivalent of four (4) NB channels if equipment is used which meets the "spectrum efficiency standard."

Finally, the FCC has imposed limits on allowable antenna height/effective radiated power ("ERP") of new stations based on the "safe harbor" tables proposed by LMCC, which account for rural/urban and terrain distinctions. Most observers view the adoption of the safe harbor tables as a definite improvement. ♦

For further information contact the editor:

**Raymond A. Kowalski**, Law Offices of Keller and Heckman, Washington Center, 1001 G Street, N.W., Washington, D.C. 20001, Tel. (202) 434-4230, Fax (202) 434-4646. (This newsletter may be copied or quoted, so long as proper attribution is given. Articles are on topics of general interest and do not constitute legal advice for particularized facts.)

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# STATUS REPORT: Pending Telecommunications Legislation

by Joseph M. Sandri

## Telecommunications Reform

The swift progress made earlier this year on telecommunications reform legislation slowed in September but has picked up in October. On June 15, 1995, the Senate passed its version of telecommunications reform legislation, S. 652. On August 4, 1995, the House approved its version, H.R. 1555. The two measures must next go to a House and Senate Conference Committee where differences between both bills must be resolved prior to sending the bill to President Clinton for his consideration.

It is not clear whether the conference process is substantially prolonging the amount of time it will take to finally pass a consolidated bill. The House and Senate took until mid-October to name the "conferees" who will attend the conference committee negotiations. The Senate named eleven conferees while the House has named dozens of conferees, many of whom are only allowed to negotiate specific sections of the bill. Some Congressional sources believe the committee will pass the legislation in short order. Other reports have Congress finally passing a consolidated bill well beyond their publicly stated goal of Thanksgiving, with a few predicting that the bill will not pass until March.

The bills contain similar reforms in that they generally eliminate market-entry barriers in the cable, local telephone, manufacturing, and long-distance markets. One significant difference is that S. 652 permits large utility holding companies to enter the telecommunications marketplace. Almost every entity which has entered, or seeks to enter, any of the varied telecommunications markets will be affected by this legislation. President Clinton has repeatedly threatened to veto the legislation if significant changes are not made which would tighten the conditions under which Regional Bell

Operating Companies would be permitted entry into long distance markets. However, the overwhelming bipartisan votes for H.R. 1555 and S. 652 will make sustaining a veto difficult.

## 2 GHz Legislation

At the bidding of the Personal Communications Service ("PCS") industry, Representative Ralph M. Hall (D-TX) successfully introduced an amendment in the House Commerce Committee's budget recommendation legislation which would shorten the voluntary negotiation period in the 2 GHz PCS/incumbent microwave licensee transition process. Many 2 GHz incumbents oppose the current version of the Hall amendment and are actively taking their message to Capitol Hill in order to prevent this language from being included in the final House budget reconciliation package ("Budget Act").

The Hall amendment would alter the ability of 2 GHz incumbents to obtain favorable terms during relocation negotia-

tions with PCS licensees. Specifically, if this language were enacted, the voluntary negotiation period in the 2 GHz proceeding would be reduced from two years to one year. The voluntary negotiation period would begin after the date of acceptance by the Federal Communications Commission ("FCC") of the PCS licensee's applications. The Senate Commerce Committee did not include similar language in its budget recommendations. The House and Senate have yet to pass their respective Budget Acts and to reconcile their differing versions in a joint House-Senate conference.

## Spectrum Auctions

The Senate telecommunications reform bill, S. 652, and the draft House and Senate Budgets all contain language which would grant the FCC the authority to auction privately-used spectrum. Currently, the FCC may only auction spectrum assigned to commercial radio services. One of these versions is expected to reach the President's desk this year. ♦

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## 2GHz Microwave (continued from page 1)

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facilities, under the proposal, would be based on: (1) communications throughput, (2) system reliability, and (3) operating costs.

The Commission announced its proposal to impose a time limit on the PCS licensees' obligation to provide comparable facilities. All microwave links remaining in the 2 GHz band would become secondary beginning in the year 2005, if the Commission's proposal is adopted. This "sunset" provision could allow PCS licensees to expand without limitation after that year, regardless of the interference to microwave licensees.

The text of the Commission's Notice was released October 13, 1995. Comments concerning the Commission's new proposals to change the relocation framework are due November 30, 1995 and Reply Comments are due on December 21, 1995.

A video tape of the FCC Open Meeting of October 12, 1995 where the Commission adopted this Notice of Proposed Rulemaking, is available to interested clients. Please contact Jennie Cardin at (202) 434-4275 ♦

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# NTIA Releases Land Mobile Spectrum Planning Options Report

by Paula Deza

**T**he U.S. Department of Commerce, through its National Telecommunications and Information Administration (NTIA), has released its "Land Mobile Spectrum Planning Options Report" (Land Mobile Report). Of specific interest, NTIA concluded that 50 MHz of spectrum should be made available over the next ten years for new, advanced private land mobile applications.

The Strategic Spectrum Planning Program (SSP Program) was initiated by NTIA in response to a Congressional mandate to develop long-term spectrum plans that promote the effective and efficient use of the spectrum. Because land mobile services are in the most critical need for spectrum, NTIA released the Land Mobile Report as the first in a series that address the spectrum requirements identified in the April 1995 NTIA

report, "U.S. National Spectrum Requirements: Projections and Trends Report" (NTIA Requirement Study).

The first phase of NTIA's Strategic Spectrum Planning Program, to define long-term spectrum requirements, was completed upon the release of the Requirement Study. The final phase of the Strategic Spectrum Planning Program is to develop spectrum allocation implementation plans.

NTIA used a special software program called SUM (Spectrum Use Measure) to calculate land mobile spectrum usage across the country, and concluded that in 10 years, an additional 204 MHz of spectrum would be required to accommodate land mobile services. NTIA projected that 50 MHz of spectrum will be required for new advanced private land mobile radio uses, including public

safety and industrial uses. The Intelligent Transportation Systems, which includes short-range information exchange systems and vehicular collision-avoidance data links, would require another 85 MHz of spectrum. The remaining 69 MHz of spectrum would be required in order to accommodate commercial mobile radio users and other private and federal land mobile radio users.

The Land Mobile Report suggests options for satisfying the demand for spectrum access. NTIA proposed that higher frequencies (above 20 GHz) be used; incumbent spectrum users be reaccommodated to other frequency bands; advanced technologies be implemented to make more efficient use of the spectrum; and non-spectrum technologies, such as fiber optic cable or copper wire, be utilized instead of radio spectrum, where feasible. ♦

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### KELLER AND HECKMAN

L A W   O F F I C E S

1001 G Street, N.W.  
Washington, D.C. 20001  
(202) 434-4100

Brussels Office:  
Boulevard Louis Schmidt 87  
B-1040 Brussels  
32(2) 732-5280